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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/241,823	02/01/1999	KEVIN J. ZIESE	062891.0240	9197

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TERRY J STALFORD
BAKER & BOTTS
2001 ROSS AVENUE
DALLAS, TX 752012980

EXAMINER

DAM, TUAN QUANG

ART UNIT	PAPER NUMBER
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2122

DATE MAILED: 01/24/2002

13

Please find below and/or attached an Office communication concerning this application or proceeding.

50

Office Action Summary

Application No.
09/214,823

Applicant(s)

Ziese

Examiner

Tuan Q. Dam

Art Unit

2122



— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Nov 26, 2001 - RCE

2a) ☐ This action is **FINAL**.

2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 9-13, 22-24, and 26 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 9-13, 22-24, and 26 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirements.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

20) ☐ Other: _____

DETAILED ACTION

1. Claims 9-13, 22-24, and 26 have been amended and presented for examination in this RCE. Applicant's arguments for the amended claims, under the Remarks section at pages 6-8 of the RCE, are moot because of new ground of rejection.

Claim Rejections - 35 USC § 112

2. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 26, line 2, recites limitation "*the intrusion detection program*". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9-13, 22-24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathur '5,008,814' (hereinafter *Mathur*) in view of Ciccone, Jr. et al '6,338,149', art made of record (hereinafter *Ciccone*).

As to claim 9, *Mathur* teaches and/or discloses a method and apparatus for updating software program for a plurality of nodes (sites) that includes the steps of downloading,

installing, determining (verifying operating correctly) and restoring the first version (original software version) (*See* Abstract, FIG. 2 and associated text. Also, see Applicant's remarks at pages 6-7). As the Applicant points out in the remarks' section at pages 6-7, *Mathur's* restoring process includes an operator element (manually) and does not teach an "*automatically restoring*" step. However, *Ciccone* teaches and/or discloses a change monitoring, tracking in controlled computing environments, and response system that includes both manually restoring and automatically restoring steps (*See* col. 20: 50 to col. 21:10; col. 22:9-13, 24-34; and at col. 26:16-21).

Both *Mathur* and *Ciccone* are in the same field of endeavor for providing a distributed information and response system in controlled computing network/environment. Thus, it would have been obvious to one of ordinary skill in the pertinent art at the time of the invention was made to combine such "*automatically restoring*" teachings of *Ciccone* into *Mathur's* manually restoring, because this would enhance the *Mathur* system with a more versatile and/or efficient method/system.

As to claim 10, this is another method version of the claimed method discussed above, claim 9, wherein "*automatically distributing the downloaded update to a disparate network site* (other network's member)..." now being claimed. Although *Mathur* teaches and/or discloses such a distributing step that initiated by an operator command, a "distribution command", in particular, after the new software version is installed in the source node of a distributed network (manually - *See* col. 4:64 to col. 5:14; col. 11:16-19; and at col. 15:16-21; so as Applicant points out under the remarks' section at pages 7-8). However, the

distribution is initiated by such a distribution command (manually), advantageously provides the operator a means for controlling the so called "operator node N_o ", i.e., the node at which a distribution command is entered, which may or may not be the source node N_s (See col. 5:1-14. Note that, Applicant has missed characterizes the *Mathur* manual command teachings under the remarks' section as noted above). Thus, it would become apparent to one skilled in the pertinent art at the time of the invention was made to recognize that, in particular, after such a new software version has been installed and tested before it is distributed, as concerned in *Mathur* (See col. 4:64-68), then such an automatically distributing step without a means for controlling the operator node N_o would have been obvious. In an alternative, automating such a manual step is, at least, well known in the computer art. Accordingly, it would also have been obvious to one skilled in the pertinent art at the time of the invention was made to implement such an automatic step into the *Mathur* system because this would provide the *Mathur* system with a more efficient method and/or system.

As to claim 11, this is another method version of the claimed methods discussed above, claims 9 and/or 10, wherein all claimed limitations also have been discussed and/or covered as set forth above. Thus, the same rationales provided in the rejection of claims 9 and/or 10 above are also applied and incorporated herein.

As to claim 12, this is another method version of the claimed method discussed above, claim 11, wherein "broadcasting over a network an update message" now being claimed. Official notice taken that such an update message broadcasting over a network is well known in the computer software distribution art, as noted in previous Office action. Thus, it would

have been obvious to one of ordinary skill in the pertinent art at the time of the invention was made to also practice the *Mathur* and *Ciccone* combination with such a broadcast message because this would provide the *Mathur* and *Ciccone* combination with a more efficient distributed step and/or system.

As to claims 13 & 26, such claimed limitations as “*restoring*” also have been addressed and/or covered as set forth in claim 9 above.

As to claim 22, this is an apparatus version of the claimed methods discussed above, claims 10 and/or 11, wherein “*an intrusion detection system*” now being claimed for performing such claimed method steps. *Mathur* and *Ciccone* in separation and/or in combination do not disclose such an intrusion detection system. However, such an intrusion detection system *per se* is well known in the intrusion detection art, as Applicant acknowledged in the background section of the filed specification at page 2:32 to page 3:9; and as discussed in previous Office action. Thus, it would become apparent to one skilled in the pertinent art at the time of the invention was made to implement and/or applying *Mathur* and *Ciccone* teaching for such a typical intrusion detection system, as in prior art, since *Mathur* and *Ciccone* teaching regardless of what application software program being updated and that would including such a *distributing* feature as also has been addressed and/or covered in claim 10 and/or 11 above, and accordingly it would also have been obvious.

As to claims 22 & 23, *Mathur* also discloses “*an automated event*” and “*a time event*” (E.g. see periodically event at col. 3:51-53).

Furthermore, it has been settled that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

5. The background art of interest is cited by the examiner. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Tuan Dam whose telephone number is (703) 305-4552. The examiner can normally be reached on Tuesday-Friday from 7:30 AM to 5:00 PM. The examiner can also be reached on alternate Mondays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Gregory Morse, can be reached on (703) 308-4789.

Any response to this Final action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 746-7239, (for formal communications intended for entry)

Or:

(703) 746-7240 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

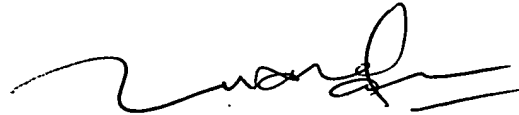
Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,
Arlington, VA., 22202. Fourth Floor (Receptionist).

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

01/22/02
TQD



TUAN Q. DAM
PRIMARY EXAMINER